Competition Management Office Presents...

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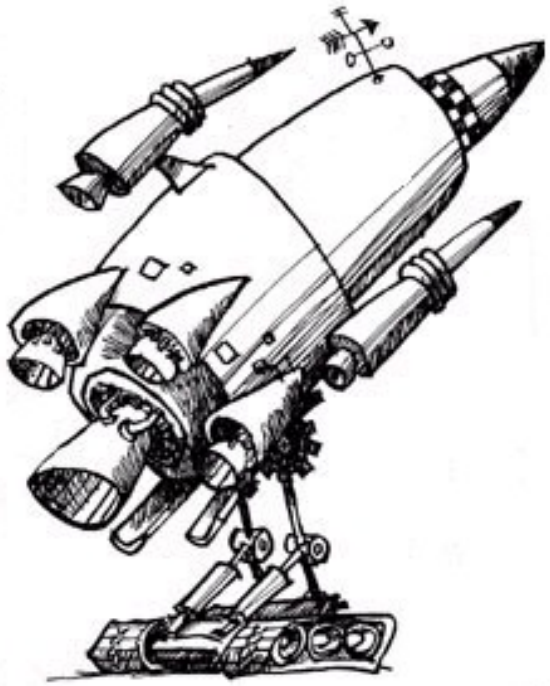
Strictly Commercial



Commercial Contracting

- Regulatory Overview
- New Guidance
- Commerciality Determination
- Market Research
- TACOM Procurement Procedure
- Summary

Commercial Contracting
FASA 1994

- Establishes the preference for commercial items
- Competition Advocate is Commercial Advocate
- Commercial practices
- Commerciality flow-down
- Rationale: $$ and Time!

Commercial Contracting Definition (FAR 2.101(a)(1))

- Commercial Items:
  - Any item *of a type* used for nongovernmental purposes that has been sold, leased or licensed to the general public or *offered* to the general public
  - Any item that *evolved* from an item described above
  - Any item that would meet these criteria except for *customary modifications or minor modifications* typically not available in the market place.

Commercial Contracting Service Definition

- Commercial services:
  - Other services *of a type* offered and sold competitively in *substantial quantities in the commercial marketplace* based on established catalog or market prices for specific tasks performed with standard terms and conditions.
  - Services offered in support of a commercial supply item to the Government, if the source of such services:

Commercial Contracting New Guidance

- Under-Secretary of Defense for Acquisition Logistics & Technology memo 05 Jan 01
  - Double the 1999 $$ Value of Supplies & Services awarded under FAR12 by 2005
  - 50% of contract actions are FAR12 by 2005
- ASAALT memo 26 Mar 01
  - Services >$25,000 are presumed to be commercial and FAR12 will be used
  - Waiver from Competition Advocate necessary if FAR12 is not used

Commercial Contracting New Guidance

- Exceptions:
  - FAR36 Construction & Architectural services
  - Supplies (for the time being)
- Not Excepted:
  - R&D Contracts

Commercial Contracting The Commerciality Determination

- No FAR Definition or explicit requirement
- Derived from FAR10 & FAR12 Requirements
  - Must do Market Research to Determine if Commercial Items are available to meet Agency needs (FAR10 & FAR12)
  - Must Document Market Research (FAR10
  - FAR12 sets $$ Thresholds

Dollar Value	Commercial Item Determination Required?	Competition Advocate Approval of Waiver of Commercial Requirement?
< $2500	No	No
>$2500 <$25,000	Yes	No
>$25,000	Yes	Yes

Commercial Contracting
The Commerciality Determination

The key to the Commerciality Determination is:

MARKET RESEARCH

Commercial Contracting Market Research

- FAR10 Requirements
  - >$100,000
  - <$100,000 if appropriate
  - Must be documented
- FAR12 Requirements
  - Needed to support commerciality determination
  - >$2500

Commercial Contracting
Market Research

- The collection and analyzing of information about the capabilities of the market to satisfy agency needs
  - technology/capability
  - pricing
  - commercial practices
- Market Research is **NOT** source selection!

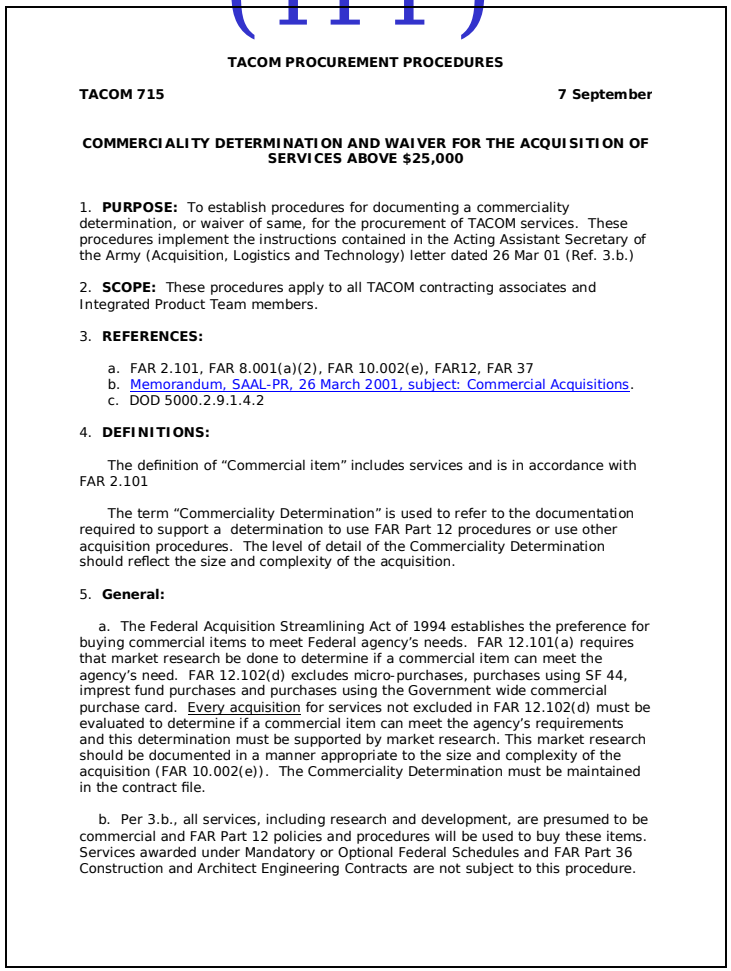
Commercial Contracting Market Research Techniques

- People/Industry contacts
- Source lists
- Government databases
- On-line resources
- Formal requests (CBD)
- Catalogs/product literature
- Meetings (APBI, pre-solicitation conferences)

Commercial Contracting Market Research Techniques

The best Market Research is ***ACTIVE***

Commercial Contracting TACOM Procurement Procedure (TPP)



TACOM PROCUREMENT PROCEDURES

TACOM 715 **7 September**

COMMERCIALITY DETERMINATION AND WAIVER FOR THE ACQUISITION OF SERVICES ABOVE $25,000

1. **PURPOSE:** To establish procedures for documenting a commerciality determination, or waiver of same, for the procurement of TACOM services. These procedures implement the instructions contained in the Acting Assistant Secretary of the Army (Acquisition, Logistics and Technology) letter dated 26 Mar 01 (Ref. 3.b.)

2. **SCOPE:** These procedures apply to all TACOM contracting associates and Integrated Product Team members.

3. **REFERENCES:**

a. FAR 2.101, FAR 8.001(a)(2), FAR 10.002(e), FAR12, FAR 37
b. Memorandum, SAAL-PR, 26 March 2001, subject: Commercial Acquisitions.
c. DOD 5000.2.9.1.4.2

4. **DEFINITIONS:**

The definition of "Commercial item" includes services and is in accordance with FAR 2.101

The term "Commerciality Determination" is used to refer to the documentation required to support a determination to use FAR Part 12 procedures or use other acquisition procedures. The level of detail of the Commerciality Determination should reflect the size and complexity of the acquisition.

5. **General:**

a. The Federal Acquisition Streamlining Act of 1994 establishes the preference for buying commercial items to meet Federal agency's needs. FAR 12.101(a) requires that market research be done to determine if a commercial item can meet the agency's need. FAR 12.102(d) excludes micro-purchases, purchases using SF 44, imprest fund purchases and purchases using the Government wide commercial purchase card. Every acquisition for services not excluded in FAR 12.102(d) must be evaluated to determine if a commercial item can meet the agency's requirements and this determination must be supported by market research. This market research should be documented in a manner appropriate to the size and complexity of the acquisition (FAR 10.002(e)). The Commerciality Determination must be maintained in the contract file.

b. Per 3.b., all services, including research and development, are presumed to be commercial and FAR Part 12 policies and procedures will be used to buy these items. Services awarded under Mandatory or Optional Federal Schedules and FAR Part 36 Construction and Architect Engineering Contracts are not subject to this procedure.

Commercial Contracting TPP Summary

- Applies to ***Services Only!***
- Over $25,000
- Market Research
- Documentation
- Signed by IPT Chief or PCO
- If not using FAR12 must route to Competition Advocate for Waiver

Commercial Contracting TPP Summary

- TPP Appendix: Commerciality Determination/Waiver Format
- Section 1: Description of Requirement
- Section 2: Team Members
- Section 3: Market Research Effort
- Section 4: Market Research Results
- Section 5:Additional Considerations
- Section 6: Determination
- Section 7: Certification
- Section 8: Waiver

Commercial Contracting TPP Summary

- Section 3 & 4:
  - Market Research Effort should be active. Market Surveys may or may not be enough. Tell us how you know what you know.
  - Market Research Results should tell why the service is **NOT** commercial according to the FAR Definition.
  - R&D services for military unique items **MAY** be commercial!
- Section 5: Contract type considerations
  - Rules are changing
  - For Commercial items FAR12 trumps FAR35!

Commercial Contracting Summary

- Commercial Contracting is Heating up!
- DoD & DA Goals
- Today Services, Tomorrow Supplies
- The Key to Commerciality is Market Research
- New TPP contains new requirements for buying services
- Available on ERC
- CMO is **always** available for assistance